



The Roman Trial Against Paul according to Acts 21–28

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The Last Years of Paul

Essays from the Tarragona Conference, June 2013

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Table of Contents

Preface.....	V
 <i>John M.G. Barclay</i>	
The Last Years of Paul What are the Issues?	1
 <i>Reimund Bieringer</i>	
The Jerusalem Collection and Paul's Missionary Project Collection and Mission in Romans 15.14–32.....	15
 <i>Michel Quesnel</i>	
The Collection for Jerusalem in the Context of Paul's Missionary Project Theological Perspectives.....	33
 <i>N.T. Wright</i>	
Paul's Western Missionary Project Jerusalem, Rome, Spain in Historical and Theological Perspectives.....	49
 <i>Karl-Wilhelm Niebuhr</i>	
Roman Jews under Nero Personal, Religious, and Ideological Networks in Mid-First Century Rome.....	67
 <i>Erich S. Gruen</i>	
The Jews of Rome under Nero.....	91
 <i>Peter Lampe</i>	
Roman Christians under Nero (54–68 CE).....	111
 <i>Peter Oakes</i>	
Using Historical Evidence in the Study of Neronian Christian Groups and Texts.....	131

Loveday Alexander

Silent Witness

Paul's Troubles with Roman Authorities in the Book of Acts.....153

Agustí Borrell

Paul and the Roman Authorities.....175

*Heike Omerzu**The Roman Trial Against Paul according to Acts 21–26*.....187*Friedrich W. Horn*

The Roman Trial Against Paul according to Acts 21–26

Reply to Heike Omerzu.....201

Bernardo Santalucia

Paul's Roman Trial

Legal Procedures regarding Roman Citizens Convicted of Serious
Charges in the First Century CE.....213*Juan Chapa*

Paul's Social Status and the Outcome of his Trial.....231

Valerio Marotta

St. Paul's Death

Roman Citizenship and *summa supplicia*.....247*John Granger Cook*

Roman Penalties Regarding Roman Citizens Convicted of Heavy

Charges in I CE.....271

Daniel Marguerat

On Why Luke Remains Silent about Paul's End

(Acts 28.16–31)305

*Tobias Nicklas*No Death of Paul in *Acts of Paul and Thecla*?333*Glenn E. Snyder*History of the *Martyrdom of Paul*.....343*Wolfgang Grünstäudl*

Hidden in Praise

Some Notes on *1 Clement 5.7*.....375

Rainer Riesner

Paul's Trial and End according to Second Timothy, 1 Clement, the Canon Muratori, and the Apocryphal Acts.....	391
---	-----

Jens Herzer

The Mission and the End of Paul Between Strategy and Reality A Response to Rainer Riesner.....	411
---	-----

Udo Schnelle

Paul's Literary Activity during his Roman Trial.....	433
--	-----

Daniel Gerber

Paul's Literary Activity during His Roman Trial A Response to Udo Schnelle.....	453
--	-----

Armand Puig i Tarrech

Paul's Missionary Activity during His Roman Trial The Case of Paul's Journey to Hispania.....	469
--	-----

Christos Karakolis

Paul's Mission to Hispania Some Critical Observations.....	507
---	-----

Angelo Di Berardino

Roman Tradition on Paul's Death Literary and Archaeological Data.....	521
--	-----

Romano Penna

The Death of Paul in the Year 58 A Hypothesis and Its Consequences for His Biography.....	533
--	-----

Jörg Frey

Paul the Apostle A Life Between Mission and Captivity.....	553
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List of Contributors.....	579
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The Roman Trial Against Paul according to Acts 21–26¹

Heike Omerzu

Acts 21–26 recounts Paul's trial before the Roman tribunal in Palestine. There are two major difficulties involved in reconstructing the course of events and details of this trial. One is related to the fact that the proceedings are attested to by the canonical Acts of the Apostles, but neither by Paul himself² nor by other sources.³ The reliability of the Lukan account is, in addition, highly disputed, especially within biblical studies.⁴ A second challenge regarding Paul's Roman trial is that, seemingly, some of its juridical features cannot be corroborated by non-biblical sources. This pertains especially to the procedure of Paul's appeal to Caesar in Acts 25.10–11, which therefore has often been regarded as either an extraordinary⁵ or unhistorical⁶ incident. Closely related to

¹ This is a revised and extended version of my contribution, "Der Prozess des Paulus," in F.W. Horn (ed.), *Paulus Handbuch* (Tübingen: Mohr Siebeck, 2013), 119–24.

² This is the case even if one locates Philippians in Rome, i.e., in the period after Paul's potential appeal to Caesar. Philippians was obviously written under Roman captivity (cf. Phil 1.13), but this does not permit conclusions regarding the particular juridical circumstances or proceedings. For a more detailed discussion, see my forthcoming article, "Paulus und die römische Rechtsordnung im Spiegel des Philipperbriefes," in J. Frey and B. Schließer (eds.), *Der Philipperbrief des Paulus in der hellenistisch-römischen Welt* (Tübingen: Mohr Siebeck, 2014).

³ *Acts of Paul* 11 describes the persecution of Paul by Nero in Rome, but the Apocryphal Acts mention neither his Roman trial in Palestine nor his appeal to Caesar.

⁴ For discussion, see J. Roloff, *Die Apostelgeschichte* (Göttingen: Vandenhoeck & Ruprecht, 1981), 6–10; J.A. Fitzmyer, *The Acts of the Apostles* (New York: Doubleday, 1998), 124–28; R.I. Pervo, *Acts: A Commentary* (Hermeneia; Minneapolis: Fortress, 2009), 14–18; J. Frey, "Fragen um Lukas als 'Historiker' und den historiographischen Charakter der Apostelgeschichte: Eine thematische Annäherung," in J. Frey, C.K. Rothschild, and J. Schröter (eds.), *Die Apostelgeschichte im Kontext antiker und frühchristlicher Historiographie* (Berlin: de Gruyter, 2009), 1–26, at 4–11.

⁵ E.g. T. Mommsen, "Die Rechtsverhältnisse des Apostels Paulus," *ZNW* 2 (1901): 81–96; W. Litewski, "Die römische Appellation in Zivilsachen (Ein Abriß) I. Principat," *ANRW* 2.14 (1982): 60–96.

⁶ E.g. W. Stegemann, "War der Apostel Paulus ein römischer Bürger?" *ZNW* 78 (1987): 200–29, at 212–13; W. Schmithals, *Die Apostelgeschichte des Lukas* (Zürich: TVZ, 1982), 219; K.L. Noethlichs, "Der Jude Paulus – ein Tarser und Römer?" in R. von Haehling (ed.), *Rom und das himmlische Jerusalem: Die frühen Christen zwischen*

both issues is the question of the reliability of Luke's reference to Paul's Roman citizenship (cf. Acts 16.37–38; 22.22–29), and whether this was the legal premise for Paul's transferral to Rome.⁷

Methodologically, one must therefore distinguish between the Lukan portrayal of the proceedings⁸ and the reconstruction of the historical trial⁹ of St. Paul. This demands a thorough analysis of Roman law and action in the first century CE. The major difficulty in this respect is that the Republican law in the early Imperial period was no longer operative, whereas the Corpus Juris Civilis, as codified by Justinian in the sixth century CE, did not yet exist, let alone had come into effect.¹⁰

A. Paul's Accusation and Arrest (Acts 21.27–22.29)

Both Paul and Luke mention that the apostle Paul had already been incriminated (cf., e.g., Phil 1.7, 13; Acts 16.19–22; 17.5–9; 18.12–17) and detained (cf. 2 Cor 6.5; 11.23; Acts 16.23–40) before his arrest in Jerusalem. While Paul himself does not provide any particulars regarding the reason for these conflicts, they are, according to Acts, connected to turmoil caused by Paul's missionary speeches.¹¹ The arrest in Acts 21.28 is, however, ascribed to a particular event in the Jerusalem Temple. Jews from Asia Minor accused Paul not only of teaching all men everywhere (πάντας πανταχῇ) against the Jewish

Anpassung und Ablehnung (Darmstadt: Wissenschaftliche Buchgesellschaft, 2000), 53–84, at 78–79.

⁷ On the latter, see Pervo, *Acts*, 612: "Discussions of appeal take their basis in the right of Roman citizens, but Acts does not introduce Paul's claim to Roman citizenship here (i.e., in Acts 25.1–12). Perhaps the franchise is to be inferred from 23:27, but it is difficult to understand why the narrator does not have Paul say, 'I am a Roman! I appeal to Caesar.' Paul grounds his appeal on his standing as one on trial in a Roman court rather than on his status."

⁸ For further reading, see, e.g., W. Radl, *Paulus und Jesus im lukanischen Doppelwerk: Untersuchungen zu Parallelmotiven im Lukasevangelium und in der Apostelgeschichte* (Frankfurt: Peter Lang, 1975); B.M. Rapske, *The Book of Acts and Paul in Roman Custody, Vol. 3: The Book of Acts in Its First Century Setting* (ed. B.W. Winter; Grand Rapids: Eerdmans, 1994); M.-E. Rosenblatt, *Paul the Accused: His Portrait in the Acts of the Apostles* (Collegeville: Michael Glazier Books, 1995); M.L. Skinner, *Locating Paul: Places of Custody as Narrative Settings in Acts 21–28* (Atlanta: SBL, 2003); E. Heusler, *Kapitalprozesse im lukanischen Doppelwerk: Die Verfahren gegen Jesus und Paulus in exegetischer und rechtshistorischer Analyse* (Münster: Aschendorff, 2000).

⁹ See e.g. H.W. Tajra, *The Trial of St. Paul: A Juridical Exegesis of the Second Half of the Acts of the Apostles* (Tübingen: Mohr Siebeck, 1989); H. Omerzu, *Der Prozeß des Paulus: Eine exegetische und rechtshistorische Untersuchung der Apostelgeschichte* (Berlin: de Gruyter, 2002).

¹⁰ Omerzu, *Prozeß*, 83, 107–09, etc.

¹¹ Omerzu, *Prozeß*, 111–274; cf. also L. Alexander's contribution in this volume.

people, the law, and the temple, but also of having introduced Greeks into the temple and thereby profaning it. The omniscient narrator characterizes this last accusation as mere speculation. He claims that the belief that Paul took a non-Jew beyond the stone balustrade between the outer and inner court was simply based on the fact that his opponents had earlier seen Paul together with the Ephesian Trophimus (21.29). Yet, as a result of the allegations, a crowd rose, seized Paul, and dragged him out of the inner temple area, after which the doors were immediately shut. They sought to kill Paul, but the tribune of the cohort was informed about the uproar and interfered (21.30–32).

Regarding the charge of taking non-Jews into the inner temple, there is epigraphic as well as literary evidence that foreigners were prohibited under penalty of death to enter the second court of Herod's temple. There exist two almost identical copies of a slab originally located at the barrier to the court of women to warn potential trespassers, which read as follows: "No foreigner is to enter within the forecourt and the balustrade around the sanctuary. Whoever is caught will have himself to blame for his subsequent death."¹² This provision is basically affirmed by Josephus, Philo, and the Mishna.¹³ According to Josephus (*B.J.* 6.126), the Jews even had the right to kill the trespassers if they were Romans,¹⁴ and there is no obvious reason why Josephus should be apologetic here. It also seems likely that, under the Roman rule over Judea, it was the Jewish authorities who were in charge of prosecuting a transgression of the balustrade inscriptions, although they were probably not allowed to enforce the capital punishment themselves.¹⁵

¹² *OGIS* 2.598; *CII* 2.1400; translation after P. Segal, "The Penalty of the Warning Inscription from the Temple of Jerusalem," *IEJ* 39 (1989): 79–84; cf. also Omerzu, *Prozeß*, 336–55.

¹³ Josephus, *C.Ap.* 2.103; *B.J.* 5.193–94; 6.124–26; *A.J.* 15.417; Philo, *Legat.* 212; *m. Kelim* 1.8c. The inscriptions read ἀλλογενής for the trespasser while Josephus uses the terms *alienigena*, ἀλλόφυλος, or ἀλλοεθνής. Philo describes the transgressors as οὐχ ὁμοεθνείς and the Mishna refers to them as יום יבוי. For a detailed discussion of whether these regulations refer to ritual (im)purity or (non-Jewish) descent, see S. Krauter, *Bürgerrecht und Kulturteilnahme: Politische und kultische Rechte und Pflichten in griechischen Poleis, Rom und antikem Judentum* (Berlin: de Gruyter, 2004), 144–92. He concludes with a *non liquet*: "Wer genau die Ausgeschlossenen sind und warum sie keinen Zutritt haben, wird durch die Verwendung des vieldeutigen Wortes ἀλλογενής in der Schwebelage gelassen" (192). However, taking all the evidence into account, it seems more likely to me that the balustrades in the Herodian temple were aimed at non-Jews. Cf. also Krauter, *Bürgerrecht*, 192: "Die Quellenlage deutet vielmehr darauf hin, daß der Ausschluß von Fremden vom Tempelareal eine späte Entwicklung ist und die Regelungen aus unterschiedlichen Gründen im Laufe der Zeit verschärft wurden."

¹⁴ Against Noethlichs, "Jude", 78.

¹⁵ K. Müller, "Sanhedrin/Synhedrium," *TRE* (1999): 30.32–42, at 36–37; Omerzu, *Prozeß*, 345–52. For a different view, see H. Schwier, *Tempel und Tempelzerstörung: Untersuchungen zu den theologischen und ideologischen Faktoren im ersten jüdisch-römischen Krieg (66–74 n.Chr.)* (Göttingen: Vandenhoeck & Ruprecht, 1989), 61.

As the charge of temple profanation does not correspond with Luke's general bias towards the portrayal of Paul as a law-abiding Jew, it might in essence reflect the historical reason for his arrest. According to Richard Pervo, "[t]he charge...is so heinous that it could contain a grain of truth."¹⁶ He argues that "in response to a rejection of the collection, Paul staged a symbolic 'liberation' of the place by demanding that he and his gentile converts be admitted."¹⁷ Similarly, Friedrich Wilhelm Horn argues in this volume that Paul was about to, or was willing to, lead Gentile Christians into the inner courts of the temple, not as an act of provocation but because he regarded the mission to the Gentiles as his priestly service and the Gentile Christians as acceptable sacrifices to God (cf. Rom 15.16). "I think, therefore, that Paul in Rom 15, while preparing his departure to Jerusalem, had developed a conception of linking his Gentile Christian companions to the Temple in a positive way, and even to the Temple's inner courts reserved for sacrificial acts."¹⁸

Both explanations are in stark contrast to Luke's account of the events because, according to Acts 21.18–26, Paul visited the temple to demonstrate, of all things, his piety in order to refute rumours about the anti-Jewish nature of his mission. Keeping in mind that, according to Rom 15.31, Paul was afraid that the handing over of the collection (cf. 1 Cor 16.1–4; 2 Cor 8–9; Rom 15.25–26) might fail, it seems possible that the real motive for Paul's visit to the temple was an agreement between him and the early community in Jerusalem that aimed at facilitating the acceptance of the collection.¹⁹ Paul's arrest, however, led to the failure of the transfer, which may explain why Luke nowhere explicitly mentions the collection (apart from perhaps in 24.17, where Paul explains that bringing alms to his nation is one reason for his visit to Jerusalem).

But why was Paul then accused and eventually arrested? To my mind, it happened either because of a misunderstanding or defamation. The behaviour of the mob described in Acts 21.27–31 is in keeping with that of crowds throughout antiquity.²⁰ According to Luke, the turmoil was caused by some Jews from Asia Minor who seemingly could not imagine that Paul would enter the temple without the intention to defile it (21.29). It is peculiar that the opponents are designated as Jews "from Asia" (οἱ ἀπὸ τῆς Ἀσίας Ἰουδαῖοι),

Schwier argues that the Jews could impose the death penalty as a legally accepted form of community justice (*Gemeinschaftsjustiz*).

¹⁶ Pervo, *Acts*, 550.

¹⁷ Pervo, *Acts*, 550. Pervo himself concedes that this is not a hypothesis "on which one can build."

¹⁸ See page 210 of this volume.

¹⁹ F.W. Horn, "Paulus, das Nasiräat und die Nasiräer," *NovT* 39 (1997): 117–37, at 134 n.64; Omerzu, *Prozeß*, 289–308.

²⁰ See Pervo, *Acts*, 551 n.12 for examples of uproars in temple areas from both Jewish and Graeco-Roman literature.

and I have previously brought forward the hypothesis that the final conflict in Jerusalem was rooted in Paul's earlier missionary activity in Ephesus.²¹ In my view, Luke conceals a serious disagreement between Paul and fellow Jews in the capital of Asia, which culminated in a longer prison stay during which the apostle probably wrote the epistles to the Philippians and to Philemon.²² It is these Jewish adversaries that followed Paul to Jerusalem. Their accusation in 21.28 that Paul brought a non-Jew into the inner temple might have been generally stimulated by the fact that he was known for associating with Gentiles. This is illustrated by the narrator's remark in 21.29 that Paul had only recently been seen in the company of the Ephesian Trophimus. Luke most likely identifies this person with Trophimus of Asia, whom he introduces in 20.4 as a member of the group of delegates delivering the collection²³ but who is not mentioned anywhere else in Acts.

A key indication that the charge of temple profanation was unjustified or fabricated is the fact that the plaintiffs at no stage identify Paul's alleged companion or any eyewitnesses to the incident.²⁴ Moreover, the accusation is in the course of the trial modified to an *attempted* profanation (Acts 24.6: καὶ τὸ ἱερὸν ἐπειράσεν βεβηλῶσαι), and this religious offence is merged with the undisputedly political delict of fomenting riot (24.5: τὸν ἄνδρα τοῦτον λοιμὸν καὶ κινδύνου σὺν ἅσιν τοῖς Ἰουδαίοις τοῖς κατὰ τὴν οἰκουμένην πρωτοστάτην τε τῆς τῶν Ναζωραίων αἱρέσεως) of which the Roman officials were exclusively in charge.²⁵

According to Acts 21.31–36, the tumult created by the allegations against Paul caused an intervention by the Romans responsible for maintaining law and order in the city of Jerusalem, including the temple precinct. The arrival of the tribune and his soldiers²⁶ momentarily calmed the uproar. Paul was arrested and, as the violence rose again, taken to the barracks. As Luke depicts this scene, by taking Paul into custody, the commander of the cohort saved the apostle from the Jewish mob.²⁷ From this point on to the end of the narrative,

²¹ Omerzu, *Prozeß*, 316–31; Omerzu, "Spurensuche: Apostelgeschichte und Paulusbriefe als Zeugnisse einer ephesischen Gefangenschaft des Paulus," in Frey, Rothschild, and Schröter (eds.), *Apostelgeschichte*, 295–326, at 314–25.

²² I disagree with Pervo, *Acts*, 550–51, who argues that the arrest in Jerusalem is based on Acts 19.28–40 and that the larger narrative pattern is the same as in Acts 6.8–8.2.

²³ Omerzu, *Prozeß*, 352–53.

²⁴ Pervo, *Acts*, 569 rightly notes: "Among the potential witnesses in his behalf will be James and those with whom he undertook the vow."

²⁵ Omerzu, *Prozeß*, 355, 436–39.

²⁶ On the scale of the military intervention, see Pervo, *Acts*, 552 n.26: "The size of the detachment, which included at least two centurions and the commandant (v. 32), implying at least two hundred men, suggests a major disturbance."

²⁷ Pervo, *Acts*, 551. I disagree, however, with Pervo's conclusion that thereby "[t]he prophecy of 21:11 is more or less fulfilled," because, unlike in Agabus' prophecy, Paul is

Paul remains under Roman arrest. Just before Paul is taken into the barracks, he reveals that he is a Jew and a citizen of Tarsus and requests to talk to the people. Paul's address to the crowd in Acts 22.1–21 mainly recalls his conversion and culminates in the apostle's call to the Gentiles at this very place, i.e., the temple in Jerusalem. Yet the speech does not address the charges brought against Paul and thus provides no information pertinent to the reconstruction of his Roman trial. When the mob rises again, the tribune Claudius Lysias (for the name, see 23.26) commands that Paul should be taken into the barracks and examined by scourging (22.24). But as he is about to be whipped, Paul invokes his Roman citizenship: "Just as they had stretched him out for the lash, Paul said to the centurion who stood by, 'Is it lawful to flog a Roman citizen who has not been convicted (εἰ ἄνθρωπον Ῥωμαῖον καὶ ἀκατάκριτον ἔξεστιν ὑμῖν μαστίζειν;)'?" (22.25).

This very claim by Paul recalls a Republican means of appeal, known as *provocatio ad populum*, that survived into the Imperial period in the form of the *Lex Iulia de vi publica* (cf. Dig. 48.6.7–8; Paul. sent. 5.26.1–2). Among other things, this law barred torture as a mere means of coercion, i.e., if it was not imposed as a sentence.²⁸ Accordingly, in Acts 22.25, Paul places special emphasis on the lack of a verdict and complains earlier in the narrative, when about to be released from prison in Philippi (16.37): "They have beaten us in public, unconvicted men who are Roman citizens" (δείραντες ἡμᾶς δημοσίᾳ ἀκατακρίτους, ἀνθρώπους Ῥωμαίους ὑπάρχοντας). It is obvious that the *Lex Iulia de vi publica* forms the legal background of both incidents.

Even though it is likely that Luke embellished the episode in the barracks, it probably rests on a historical core involving Paul's invocation of his Roman citizenship soon after his arrest in Jerusalem. This was the legal foundation for the subsequent procedure, not least Paul's appeal to Caesar.²⁹ It has often been doubted that Paul's Jewish upbringing could have been compatible with his Roman citizenship,³⁰ but there is literary as well as epigraphic evidence of

not tied by the Jews and then delivered to the Gentiles. He is under Roman custody right from the beginning.

²⁸ On the legal aspects, see J. Bleicken, "provocatio," *PRE* 23.2 (1959): 2444–463, at 2445–456; Bleicken, *Senatsgericht und Kaisergericht: Eine Studie zur Entwicklung des Prozeßrechtes im frühen Prinzipat* (Göttingen: Vandenhoeck & Ruprecht, 1962); A.W. Lintott, "Provocatio: From the Struggle of the Orders to the Principate," *ANRW* 1.2 (1972): 226–67, at 235–62; Omerzu, *Prozeß*, 64–82.

²⁹ For a different interpretation, see e.g. Stegemann, "Paulus," 204–06; Noethlichs, "Jude," 82.

³⁰ Omerzu, *Prozeß*, 36–51.

practising Jews who were Roman citizens.³¹ In Paul's case, manumission from war captivity seems to me the most likely reason why his family was awarded the Roman citizenship.

The same credibility applies to the main features of the trial described in Acts 23–26, namely, Paul's imprisonment in Caesarea (Acts 23.35) and the fact that he encountered the Roman governors Felix (Acts 24) and Festus (Acts 25). In contrast, for the prosecution and defence speeches in particular we must rely on Luke's narrative merits. They are hardly based on written records of the case, as has been suggested by, for instance, Bruce W. Winter and Ben Witherington.³² On the one hand, it is unlikely that extensive records of Paul's case were compiled as he did not have high ranking status. If that had in fact been the case, it is, on the other hand, quite improbable that Luke could have obtained access to these documents.

B. Paul's Interrogation by the Sanhedrin and his Transfer to Caesarea (Acts 22.30–23.35)

From Acts 22.30 onward, the Sanhedrin supersedes the Jews from Asia Minor as Paul's direct opponent. The Sanhedrin appears initially, in 23.1–10, as a magisterial board but from 24.1 onward as a prosecuting council. From a historical point of view, it must be doubted that the Sanhedrin had any official judicial role in the Roman trial against Paul, even though the temple, as the place of Paul's alleged misdeed, was subject to the supervision of the Jewish high priest. The examination in 23.1–10, summoned by the military tribune Claudius Lysias, should therefore most probably be ascribed to Lukan redaction. Among other things, it serves to align Paul's Roman trial with the trial against Jesus, especially his mocking and beating in Luke 22.63–71. In contrast, the fact that the Sanhedrin acts in the role of a private prosecutor, as is the case in Acts 24.1–9 and 25.5 (cf. also 24.19 regarding the absence of the initial plaintiffs), reflects the actual influence of Jewish representatives in the trial against Paul.³³ The plot against Paul in Acts 23.12–35 that constitutes the remainder of this chapter has hardly a kernel of historical accuracy beyond the

³¹ See Omerzu, *Prozeß*, 32–33 and most recently S.A. Adams, "Paul the Roman citizen: Roman Citizenship in the Ancient World and its Importance for Understanding Acts 22:22–29," in S.E. Porter (ed.), *Paul: Jew, Greek, and Roman* (Brill: Leiden, 2008), 309–26.

³² For this position, see B.W. Winter, "Official Proceedings and the Forensic Speeches in Acts 24–26," in *The Book of Acts in Its Ancient Literary Setting, Vol 1: The Book of Acts in Its First Century Setting* (eds. B.W. Winter and A.D. Clarke; Grand Rapids: Eerdmans, 1993), 305–36; B.W. Witherington, *The Acts of the Apostles: A Socio-Rhetorical Commentary* (Grand Rapids: Eerdmans, 1998), 702.

³³ Omerzu, *Prozeß*, 390–94, 449–51.

fact that Paul was probably transferred from Jerusalem to Caesarea at an early stage of his trial. The dramatic events allow the tribune another occasion to rescue Paul from the hands of Jewish opponents.

C. The Hearings before Felix and Festus (Acts 24.1–25.12)

Caesarea Maritima served in Paul's days as the capital of the province of Judea and the official residence of the Roman governors. According to Acts 23.35, the governor resided in the former palace of Herod the Great, and this is also depicted as the very place where Paul was kept in custody during his stay in Caesarea.³⁴ According to 24.1–9, the Jewish leaders – represented by the lawyer Tertullus – brought an official charge against Paul soon after his arrival in Caesarea. As mentioned above, the earlier allegation that Paul tried to profane the temple (21.28) became even more merged with the political accusation that Paul was “found a plague (εὐροντες...λοιμὸν), agitating among all the Jews throughout the world (καὶ κινοῦντα στάσεις πᾶσιν τοῖς Ἰουδαίοις τοῖς κατὰ τὴν οἰκουμένην), and a ringleader of the sect of the Nazarenes (πρωτοστάτην τε τῆς τῶν Ναζωραίων αἰρέσεως)” (Acts 24.5). As it employs terms such as στάσις or πρωτοστάτης, it is clearly aiming at an accusation of rebellion (*seditio*) which would have been highly relevant from the point of view of the governor of a notoriously turbulent province. However, according to Luke, the governor (and therefore the responsible judge), Antonius Felix, did not react by delivering a judgement but by delaying the proceedings for two years until the governor was removed. Paul was kept in custody but allowed to receive support from his friends. Felix was interested to hear the Christian message but, although he was frightened to learn about the coming judgment, he hoped to receive a bribe.

Both the extension from religious to severe political charges and the negative characterisation of Antonius Felix seem reliable. At the very least, Luke's presentation of the governor is fully in line with Tacitus' and Josephus' accounts of him.³⁵ Under Felix's successor, Porcius Festus, the proceedings were resumed (Acts 25.6–12) because of the initiative of a group of leading Jews (Acts 25.1–5). Their charges are summarized by Luke as being many, severe, and not to be substantiated (Acts 25.7), while Paul has the possibility to defend himself in direct speech, even though brief: “Neither regarding the law of the Jews, nor the temple, nor the emperor, have I offended (τι ἥμαρτον) in anything at all” (Acts 25.8). The focus of the narrative is thereby no longer on the prosecution and defence speeches, as the respective arguments are by now known to the reader, but rather the expectation of Festus' assessment of

³⁴ Rapske, *Paul*, 156–57, 170.

³⁵ Tacitus, *Ann.* 12.54; *Hist.* 5.9; Josephus, *A.J.* 20.160–81; *B.J.* 2.252–70.

the case is raised. Yet, instead of rendering a judgment, in Acts 25.9, the governor suggests relocating the proceedings to Jerusalem by asking: “Are you willing to go up to Jerusalem and be tried there before me on these charges?” (θέλεις εἰς Ἱεροσόλυμα ἀναβᾶς ἐκεῖ περὶ τούτων κριθῆναι ἐπ’ ἐμοῦ;). This brought about Paul’s appeal to Caesar, as related in Acts 25.10–11:

I stand at Caesar’s tribunal, where I ought to be tried; to the Jews I have done no wrong, as you very well know. But if I have done wrong and have committed anything for which I deserve to die, I do not refuse to die; but if there is nothing in that of which they accuse me, no one can deliver me to them. I appeal to Caesar (Καίσαρα ἐπικαλοῦμαι).

As mentioned above, Paul’s appeal has often been considered to be unique because it was lodged *before a verdict* was rendered as well as *orally* and *directly addressed to the emperor*. It is usually supposed that appeals in the Imperial period were illegitimate in pending actions and that they had to comply with the appeal stages.³⁶ Consequently, Luke’s account of Paul’s appeal to Caesar is either regarded as a special regulation of which we lack further examples (e.g., Theodor Mommsen),³⁷ or as unhistorical (e.g., Walter Schmithals, Wolfgang Stegemann, Karl Leo Noethlichs, Richard Pervo).³⁸ Yet, to my mind, neither explanation adequately takes into account the specific legal situation of the early Imperial era as a period of transition. Another difficulty which must be addressed is the fact that both in the Republican and in the Imperial era two different terms for appeals by a Roman citizen occur, *appellatio* and *provocatio*, which partly designate different scopes of protection.³⁹

³⁶ Dig. 49; Litewski, “Appellation”; Omerzu, *Prozeß*, 84–92.

³⁷ See e.g. T. Kipp, “Appellatio 1. Im Civilprocess,” *PRE* 2.1 (1895): 194–208, at 197; Mommsen, “Rechtsverhältnisse,” 95–96; A.H.M. Jones, “Imperial and Senatorial Jurisdiction in the Early Principate,” in Jones, *Studies in Roman Government and Law* (Oxford: Blackwell, 1960), 67–98, at 69; Litewski, “Appellation,” 68, 81.

³⁸ Schmithals, *Apostelgeschichte*, 219; Stegemann, “Paulus,” 212–13; Noethlichs, “Paulus,” 79. P. Garnsey, “The *Lex Iulia* and Appeal under the Empire,” *JRS* 56 (1966): 167–89, at 182–85 and K. Haacker, “Zum Werdegang des Apostels Paulus. Biographische Daten und ihre theologische Relevanz,” *ANRW* 2 26.2 (1995), 815–938, 1924–933, at 837. These scholars suggest that Paul invoked a *reiectio iudicii*, i.e., that he rejected the judge. Pervo (*Acts*, 613) is more sceptical: “In sum, Paul *may* have been a citizen and he *may* have appealed, but the text of Acts does not provide sufficient clarity. The appeal functions, like the citizenship, as a literary device, and it may have been a (brilliant) authorial creation.”

³⁹ Omerzu, *Prozeß*, 64–67, 83; Omerzu, “Fallstudie: Der Prozess des Paulus,” in K. Erlemann et al. (eds.), *Neues Testament und Antike Kultur: Prolegomena – Quellen – Geschichte* (Neukirchen-Vluyn: Neukirchener Verlag, 2004), 247–52, at 247–48.

D. *Appellatio* and *Provocatio* in Roman Law⁴⁰

According to the *Digests*, a compendium of Roman law compiled under the Emperor Justinian in 530–533 CE and part of the *Corpus Juris Civilis*, the right of appeal to Caesar was bestowed on all Roman citizens. This right implied that every holder of Roman citizenship was allowed to appeal against a judgment by a lower court and demand that their case be transferred to the emperor's tribunal in Rome. *Dig.* 49 meticulously determines the requirements for and procedures of an appeal,⁴¹ but the nature of the *Digests* – as an excerpt of the work of about 40 classical lawyers deriving from the first three centuries CE – must be taken into account when applying it to Paul's trial. It must, for instance, be asked what exactly the *ius appellacionis* involved in earlier periods of the Empire, i.e., under conditions that were both politically and legally different from Justinian's time. Moreover, *provocatio/provocare* and *appellatio/appellare* are used as synonyms in the *Digests*, while the two terms designated different legal means under the Republic. Additionally, the relation between the Republican claim and the Imperial right of appeal is disputed.

The Republican *appellatio ad tribunos* and *provocatio ad populum* can be traced back to the plebeians' striving for protection against the unjust exercise of magisterial authority during the Struggle of the Orders. While the plebeian tribune was exhorted to provide help (*auxilium ferre*) on the basis of his right of intervention (*ius intercessionis*),⁴² a *provocatio* was initially a verbal exclamation to draw the attention and thereby obtain the assistance of the *plebs*. After the Conflict of the Orders this instrument of empowerment was institutionalized by legal provisions banning the corporal punishment of Roman citizens, not in general but in cases without a preceding trial and verdict. Consecutive *leges de provocatione*⁴³ granted Roman citizens a duly carried out trial and protection against coercion, i.e., magisterial arbitrariness.⁴⁴ Unlike the older *provocatio* laws, the *lex Iulia de vi publica*,⁴⁵ which was most likely issued by Augustus in 18/17 BCE, is only attested in the work of jurists of the second and third centuries CE. The text of the *lex Iulia* reflects a certain degree of adaption to later socio-political conditions,⁴⁶ which makes it difficult to reconstruct the original version. However, the mere enactment of the *lex*

⁴⁰ The following chapter is a slightly revised version of my encyclopedia entry "Appeal to Caesar," *EBR* 2 (2009): 511–15.

⁴¹ Litewski, "Appellation"; Omerzu, *Prozeß*, 84–92.

⁴² See e.g. Livy, *Hist.* ii.55.4; viii.33.8; xlii.32.5–35.2.

⁴³ E.g. *lex Valeria*: Livy, *Hist.* 10.9.3–6; *leges Porciae*: Livy, *Hist.* 10.9.4, Cicero, *Rep.* 2.54, *Verr.* 2.5.163; *lex Sempronia*: Cicero, *Rab. Perd.* 12, Plutarch, *Ti. C. Gracch.* 4.1.

⁴⁴ See esp. Bleicken, "provocatio," 2455–456.

⁴⁵ *Dig.* 48.6.7–8; Paul. *sent.* 5.26.1–2.

⁴⁶ Garnsey, "Lex Iulia."

Iulia under Augustus confirms a lasting interest in the protection of Roman citizens from arbitrary magisterial *coercitio*. It must be stressed, however, that both forms of appeal that originated in the Republican period, *appellatio ad tribunos* and *provocatio ad populum*, only had a cassatory, i.e., an annulling, effect and did not involve the revision of the original verdict.⁴⁷ The *appellatio ad Caesarem* is, on the contrary, a reformatory legal means by which previous court decisions against Roman citizens could be revised.⁴⁸ It is therefore most unlikely that the appeal to the emperor originates from either form of the Republican means of appeal, *appellatio ad tribunos* or *provocatio ad populum*,⁴⁹ although, for instance, it has been suggested that the right of appeal derives from the tribunician authority of *ius auxilii* that was granted to Octavian in 30 BCE,⁵⁰ on the basis of which he and subsequent emperors exerted the same authority as the plebeian tribunes.⁵¹ To my mind, it is more likely that the right of appeal to the emperor came into effect because of the generally altered power structures of the Imperial period, as will be illustrated below.

The transition from the Republic to the Principate was, among many other things, characterised by significant changes to the judiciaries. The chief cause of this development was the privileged status of the emperor, both in political and legal respects, which was accompanied by a virtual disempowerment of the Senate. This particular constellation enabled the emperor to exert power and control over practically all spheres of the Roman state and society, including administration and jurisdiction. As a result, the delegation of imperial authority (*imperium*) to governors within the provinces (*legati Augusti pro praetore*), as well as the expansion of an extraordinary form of juridical proceedings (*cognitio extra ordinem*), in which the Roman magistrate was only a mandatory, i.e., an appointed agent of the emperor, resulted in the emergence of an entirely new form of appeal in the Imperial period. As the magisterial authority of the provincial governors was delegated solely from the emperor's *imperium*, it was possible for their cases to be referred to the emperor's court

⁴⁷ Against T. Mommsen, *Römisches Strafrecht* (Leipzig: Duncker & Humblot, 1899; repr. Graz: Akademische Druck- und Verlagsanstalt, 1955), 473–78; Jones, "Jurisdiction," 69–77.

⁴⁸ *Dig.* 49.1.1 pr; 2.2; 8.1.1.

⁴⁹ Litewski, "Appellation," 66; Bleicken, *Senatsgericht*, 126–31; Omerzu, *Prozeß*, 104.

⁵⁰ Cassius Dio 51.19.6–7.

⁵¹ Jones, "Jurisdiction," 94–96; F. Millar, *The Emperor in the Roman World (31 BC – AD 337)* (London: Duckworth, 1977), 509; Garnsey, "Lex Iulia," 185–87; Lintott, "Provocatio," 263–67.

in Rome, either by one of the parties or by the magistrates themselves. The governors were not obliged to transfer criminal cases to Rome but it seems that they were more apt to do so if Roman citizens were involved.⁵²

In 212 CE, all free inhabitants of the *imperium Romanum* became Roman citizens by means of the *constitutio Antoniniana*. This resulted in a de facto devaluation of the previously privileged civic rights. One consequence of this development was a rising number of appeal cases. It can therefore be assumed that in the early Imperial period, and thus also in Paul's trial, many of the regulations regarding appeals that later became part of the *Corpus Juris* did not yet exist. It is likely that these regulations were successively enacted in response to practical needs.⁵³ Hence, it can be assumed that the strict restriction of appeals to *final* judgements,⁵⁴ as well as, for instance, the delegation of appeal cases and the formation of appeal stages⁵⁵ were mainly aimed at setting limits on the steadily increasing number of appeals. The same applies to provisions for fines for appeals without a genuine cause.⁵⁶ The hypothesis of a gradually developing system of regulations for appeals can be supported by evidence of less strict procedures in the early Imperial period. Cass. Dio 63.2.3 attests, for instance, that it was possible to appeal at *any* stage of a trial, rather than only after a judgement was rendered. Furthermore, incidents related by Tacitus and Cassius Dio indicate that appeals could, at least occasionally, also be addressed directly and orally to the emperor.⁵⁷

E. Paul's Appeal(s)

To my mind, the canonical Acts of the Apostles demonstrate both forms of appeal, the Republican and the Imperial. According to Acts 16.37 and 22.25, Paul asserted his Roman citizenship twice when being interrogated under torture. Regardless of whether these narratives contain a historical core or not, they reflect the old *provocatio ad populum* which prohibited the scourging and torturing of Roman citizens and was still in effect in the Imperial period, as attested by the *lex Iulia de vi publica*. Accordingly, the Lukan Paul specifically complains about being tortured because he was uncondemned (ἀκατάκριτος). Luke may refer to cases of a violation of the *ius provocationis*

⁵² E.g., Pliny, *Ep.* 10.96.4; Tacitus, *Hist.* 4.13.1; Josephus, *B.J.* 3.398; Cassius Dio 67.16.2; cf. Garnsey, "Lex Iulia," 180–82; Omerzu, *Prozeß*, 97–98.

⁵³ Millar, *Emperor*, 509–14; Omerzu, *Prozeß*, 106–07.

⁵⁴ See *Dig.* 49.5.2 for exceptions.

⁵⁵ *Dig.* 49.1.21 pr.; Suetonius, *Aug.* 33.3.

⁵⁶ Tacitus, *Ann.* 14.28; Paulus, *sent.* 5.33.1–8; *Cod. justin.* 7.62.6.4.

⁵⁷ Tacitus, *Ann.* 16.8.3; Cassius Dio 59.8.5; 63.2.3. For further references, see Omerzu, *Prozeß*, 93–100.

here, which are also known to have occurred from other sources.⁵⁸ However, within the storyline, neither the Philippian magistrates in Acts 16 nor the military tribune Claudius Lysias in Acts 22 knew that the captive they had ordered to be flogged was a Roman citizen because Paul did not invoke his civil rights in time.

Apart from this Republican form of appeal, Luke also employs the legal means that had developed in the Imperial era. Paul's intercession in Acts 25.10–11 is an apt example of an *appellatio ad Caesarem* and it forms the climax of Paul's Roman trial as narrated in Acts 21.27–26.32. Paul lodged his appeal after the governor Festus had suggested a change of venue from Caesarea to Jerusalem (25.9b: Do you wish to go up to Jerusalem and be tried there on these charges before me? [θέλεις εἰς Ἱεροσόλυμα ἀναβὰς ἐκεῖ περὶ τούτων κριθῆναι ἐπ' ἐμοῦ;]). On the narrative level, this proposal by Festus, amongst other devices, should be read against the background of the leading Jews' request that the governor send Paul back to Jerusalem because they planned to kill him in an ambush (25.3). This is clearly alluded to in the narrator's remark in 25.9a that Festus, by his suggestion to relocate Paul, wanted to do the Jews a favour (25.9a: θέλων τοῖς Ἰουδαίοις χάριν καταθέσθαι). Luke thereby insinuates that Paul was driven to his appeal to the emperor because he feared to be referred to the Jewish tribunal, of which he expected a wrongful judgment. I do not claim that this plot reflects the historical circumstances of Paul's trial, but Luke's interpretation of it. I will return to this point.

According to Acts 25.12, Festus granted Paul's appeal after conferring with his council (τότε ὁ Φῆστος συλλαλήσας μετὰ τοῦ συμβουλίου ἀπεκρίθη) and ordered that the apostle be kept in custody until he could be sent to the emperor (25.21). It is obvious that this course of action does not accord with the regulations for appeals set out by the *Digests* because Paul's appeal was made *prior to* a verdict by the governor and it was *directly* addressed to Caesar, not to an appeal court. As mentioned above, this has led to Paul's case being regarded either as unhistorical or as a unique form of appeal.⁵⁹ However, the examples mentioned above demonstrate that appeals were approached in a more flexible manner under the early Empire when compared with the strictly organised system preserved in the *Digests*. Therefore, I assume that Paul's appeal in Acts 25.10–11 – on the narrative level – is an illustration of an *appellatio ad Caesarem* in the early Imperial period, before the right of appeal acquired the more systematic nature attested in the later juridical sources. Historically, however, it seems more probable to me that Paul did not lodge his appeal prior to a judgment but rather after Festus had sentenced him

⁵⁸ See e.g. Cicero, *Verr.* 2.5.62–66; Josephus, *B.J.* 2.306–08; Cassius Dio 60.24; Plutarch, *Caes.* 29.2; Suetonius, *Galb.* 9.1; Eusebius, *Hist. eccl.* 5.1.44.

⁵⁹ E.g. Mommsen, "Rechtsverhältnisse," 95–96; Garnsey, "Lex Iulia," 182–85.

to death, most likely because of rioting (*seditio*).⁶⁰ It might be for apologetic purposes that Luke concealed this, thereby avoiding casting a negative light on either the Romans or Paul.

F. Paul and Agrippa (Acts 25.13–26.32)

To my mind, Paul's encounter with the Jewish king Agrippa II has no historical foundation, but is probably a harmonisation with the trial of Jesus – more precisely, the examination by Pilate in Luke 23.6–12.⁶¹ At the same time, it fulfils Jesus' prediction in Luke 21.12 that his followers will be brought before kings and governors (cf. Acts 9.15). Paul even almost succeeds in evangelizing the Jewish king (26.28). Finally, from the point of view of jurisprudence, the encounter serves to confirm for the last time, following Claudius Lysias in Acts 23.29, Festus in Acts 25.18, 25, and now from the Jewish king, Paul's innocence.⁶² Agrippa and Festus agreed that Paul had done nothing that deserved death or even imprisonment (Acts 26.31). Agrippa's final remark that Paul could have been released if he had not appealed to Caesar does not, however, have a juridical basis. Festus would still have had the right to release the culprit had he been convinced of his innocence, or Paul could have withdrawn his appeal.⁶³

G. Concluding Remarks

In my opinion, it is most probable that Festus immediately granted Paul's appeal and transferred him to Rome. There, according to Acts 28.16–31, the apostle spent two years in prison, which may be a reliable piece of information. The end of the trial or the end of Paul is not related by Luke. If the appeal is historical, it seems probable to me that Nero confirmed Festus' decision and Paul was thereafter executed. A release or a natural death seem less likely to me.⁶⁴

⁶⁰ Omerzu, *Prozeß*, 493–94. Acts 25.8 implies a *crimen maiestatis*, which is probably an adjustment to the trial of Jesus; cf. Luke 23.2–3, 37–38 and Omerzu, *Prozeß*, 477–80.

⁶¹ See Pervo, *Acts*, 592–93 on the similarities between Luke 22–23 and Acts 23–26 in general: “The large number of correspondences in sequence and detail lead to the conclusion that this is not a matter of general parallels but the construction of duplicate patterns. Recognition of these patterns has a dampening effect on claims of historical accuracy.”

⁶² Pervo, *Acts*, 637.

⁶³ Pervo, *Acts*, 612.

⁶⁴ Omerzu, *Prozeß*, 508.